Central Law Journal.

ST. LOUIS, MO., AUGUST 24, 1917.

REMOVING DISCRIMINATION BETWEEN INTERSTATE AND INTRASTATE RATES UNDER ORDER OF INTERSTATE COMMERCE COMMISSION.

In reaffirming the Shreveport case, 234 U. S. 342, in the recent ruling of American Express Co. v. South Dakota, 37 Sup. Ct. 656, the Supreme Court goes into much discussion as to definiteness required in an order by Interstate Commerce Commission, to effect removal of unlawful discrimination, as declared by it, between interstate and intrastate rates.

In the Shreveport case the order was somewhat general in its terms and the carrier was declared to be vested with discretion in placing the two kinds of rates on the same level, that is to say by raising the local, to the interstate, rate or by lowering the interstate rate and raising the local to an intermediate scale between the two.

In the South Dakota case it was contended that the commission should specifically direct what change of rate should be made and discretion to effect equality could not be vested in the carrier.

It was said: "The order properly left to the carrier's discretion *how* the discrimination should be removed; that is, whether by lowering the interstate rates or by raising the intrastate rates, or by doing both. In its general form the order is identical with that under consideration in the Shreveport case. Where a proceeding to remove unjust discrimination presents solely the question whether the carrier has improperly exercised its authority to initiate rates, the commission may legally order, in general terms, the removal of the discrimination shown, leaving upon the carrier the burden of determining also the points to and from which rates must be changed, in order to effect a removal of the discrimination."

But this comprehensive rule appears to be qualified as follows: "But where, as here, there is a conflict between the federal and the state authorities, the commission's order cannot serve as a justification for disregarding a regulation or order issued under state authority, unless, and except so far as, it is definite as to the territory or points to which it applies. For the power of the commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic."

The thought that occurs to us here is, that the commission is a tribunal of strictly statutory powers. Its discretion is confined to the execution of those powers. It can confer no larger discretion on the carrier than it can exercise, and in many instances it may not be able to do that much. If to confer on carrier a discretion that has a tendency to bring it in conflict with a state commission's regulation, the grant may be greater than it can confer. The only justification for conferring such discretion would be that circumstances make it necessary.

But there is even a further consideration. If there is such conflict as the court speaks of, why should not the commission have to consider the question as to how the unequal rates should be made equal? In other words, the commission fixes the maximum rate and so does a state commission.

The court says: "The finding that discrimination exists and that the interstate rates are reasonable does not necessarily imply a finding that the intrastate rates are unreasonable." Equalization of rates, then, is ordered not as a means of condemning one rate or approving the other. The result, however, is a condemnation of the state rate.

Even that, however, does not follow, because the carrier may cut its rate down to

the state rate, in its discretion. When it does this for some special reason, it does not operate at a confiscatory rate which it can plead as such. It is not permitted to say it is a compulsory rate. In fact it may practically be forced to adopt it.

If the carrier arranges its rates with no guiding principle but to reach a common level as to points specified in a commission's order, it well may be imagined it soon could put out of business rates as to other points not specified. The influence it thus exerts could become exceedingly sinister, if not absolutely destructive.

It seems to us, therefore, that a commission should be required to fix a new maximum rate or take some step in applying its own power as to how inequality in rates is to be removed. Further, it would appear, that before a commission might make an order of the kind involved in this and the Shreveport case, opportunity to be heard should be granted a state commission regulating rates in the territory affected. The dominant power of federal authority is as fully recognized in this kind of proceeding, as where the national commission acts between a carrier and complainants and it is readily perceived that, while on the record there appear to be adverse parties, in reality they may be struggling to the same end—removing unlawful discrimination in unequal rates. A state commission's power is stripped where it never has a chance to be heard. Its entire theory of regulation may be very vitally affected.

In this case the order of the State Supreme Court was modified because the discretion of the carrier had given it application beyond its limits—that it applied it to "points" not fairly within the commission's order under the general terms in which it was expressed. The court admits the order of the commission to be "less explicit than desirable," but this lack of explicitness was not attributable to its vesting discretion in the carrier.

NOTES OF IMPORTANT DECISIONS.

CORPORATIONS—INSPECTION OF RECORDS.—It is held by Supreme Court of Idaho, that statutes giving the right to a stockholder to inspect books and papers of a corporation generally are an extension of common law rights, in that the latter are dependent upon inspection being sought at proper times and in good faith for the purpose of protecting the interests of the corporation and the stockholder's own interests. Pfirman v. Success M'n-ing Co., 166 Pac. 216.

The court says: "It is the decided weight of authority that such statutes have not only adopted the common law rule, but have extended the same and that the statutes make the right absolute."

Thus it has been held that it cannot be urged that the stockholder has an improper purpose in making inspection. Mafemont v. Old Colony L. Ins. Co., 189 Ill. App. 231. So that a stockholder applies at a proper time, his purpose and motive is immaterial, if that purpose is not unlawful. State ex rel. v. Doe Run Lead Co. (Mo. App.), 178 S. W. 298. And this includes the right to make written memoranda. Powell v. Tenn. Elec. Co., 220 Mass. 380, 107 N. E. 997.

It well may be imagined that a desire to inspect transfer books and accounts might be enforced, but the rule of absolute right must have its limitations, if objection is urged in good faith and the stockholder may have other interests of large character and his interest in the corporation whose books and records are sought to be examined is comparatively inconsiderable. The practice of stock manipulation and resorts in competitive strife may be judiciously noticed as to their influence as well as anything else of common knowledge.

The rights of a stockholder are circumscribed by his regard for the interests of other stockholders. If a sinister purpose that may operate to their injury is shown, it is the duty of the court to protect those interests. In the instant case the objection to an inspection seemed to be more of personal antipathy to the attorney of the applicant than anything else, and the mandamus was properly made absolute.

EMPLOYERS' LIABILITY ACT—SUIT BY FATHER FOR EXPENSE OF CARING FOR INJURED SON.—In New York C. & H. R. Co. v. Tonsellito, 37 Sup. Ct. 620, it was held that the common law right of the father of a minor employe to recover from an interstate

railroad for expenses incurred for medical attention to and loss of services of such employe was excluded by Federal Employers' Liability Act.

It was said: "New Jersey Court of Errors and Appeals ruled, and it is now maintained, that the right of action asserted by the father existed at the common law and was not taken away by the Federal Employers' Liability Act. But the contrary view, we think, is clearly settled by our recent opinions in New York, etc., R. Co. v. Winfield, 37 Sup. Ct. 546, and Erie R. Co. v. Winfield, 37 Sup. Ct. 556. There we held that the act 'is comprehensive and also exclusive' in respect of a railroad's liability for injuries suffered by its employes while engaging in interstate commerce. 'It establishes a rule or regulation which is intended to operate uniformly in all the states as respects interstate commerce, and in that field it is both paramount and exclusive.' Congress having declared when and how far and to whom carriers shall be liable on account of accidents in the specified class, such liability can neither be extended nor abridged by common or statutory laws of the state."

The Winfield cases involved only the question whether Workmen's Compensation Acts applied to employes of an interstate carrier engaged in interstate commerce. It was held they do not, because Employers' Liablity Act supplanted all state laws on that subject. State laws that were superseded might have permitted such recovery as the plaintiff sought. This is upon the theory that, if statute did not specifically provide as to this, the father's common law right in such a case remained to him. When the court in the Winfield cases spoke of the federal act being exclusive and a paramount it was speaking only of such a state law as was involved in those cases. The ruling in this case extends the language used there beyond its necessary import. The logic of the ruling is that as an instrumentality of commerce, it may be visited in a penal way, but not in a remedial sense. It can violate no intrinsic rights of another, because it is an inanimate thing and its owners are only permissively made to pay for the wrongs it by negligence inflicts.

COURTS—JURISDICTION IN QUO WARRANTO.—In First National Bank v. Fellows, 37 Sup. Ct. 734, the Federal Reserve Banking Act is held by a majority of the court to authorize the attorney-general of a state to institute a proceeding in a state court to restrain a national bank in the exercise of a power conferred by a federal statute.

This, among other things, was held in the above case, which nevertheless also decided the decision of a state court erroneous in holding that a national bank could not be vested with power to act as trustee, executor and registrar of bonds in a state when permit so to do by Federal Reserve Bank is "not in contravention of the state or local law." We consider here only the ruling first above mentioned.

The Chief Justice first speaking of the competency of a state officer to test in a state court the power of a national corporation to exert a function created by an act of Congress, says: "But without inquiring into the merits of the doctrine upon which the proposition rests, we think when the contention is tested by a consideration of the subject-matter of this particular controversy, it cannot be sustained. In other words, we are of opinion, that as the particular functions in question, by the express terms of the act of Congress, were given only 'when not in contravention of state or local law,' the state court was, if not expressly, at least impliedly, authorized by Congress to consider and pass upon the question whether the particular power was or was not in contravention of the state law, and we place our conclusion on that ground."

Justice Van Devanter, with whom concurs Justice Day, dwells upon the fact that quo warranto is a prerogative writ, and as there is no suggestion that quo warranto proceedings were in the mind of Congress, it is hardly probable that "a purpose to do anything so unusual as to authorize a state officer to institute and conduct such a proceeding in a state court against a federal corporation," was intended without this being expressly authorized.

We do not think that anything further than a strong implication is necessary to vest this authority in a state court. If the permit is not to be granted except when state law permits it to be granted, what more competent tribunal could be appealed to to decide whether or not the permit infringed upon the domain of state law than the state's own tribunals? The federal Supreme Court has held over and again, that a state court's construction of its own statutes is to be followed and it is only when reliance is placed on its common law that federal courts may adopt an independent view. Did not Congress plainly therefore intend to submit this kind of question to courts which conclusively could determine it?

In this case the Michigan court held expressly that there was nothing in Michigan

law that prevented the exercise of the functions specified, but it was ruled on other grounds that there was an improper delegation of authority under the principles announced in McCulloch v. Maryland, 4 Wheat. 738, and Osborn v. Bank of United States, 9 Wheat. 738. This ruling was held to be erroneous and this was not a local question, but one of national importance.

ARE NATIVE AMERICAN ENEMY SYMPATHIZERS SUBJECT TO COURT-MARTIAL?

Pacificist and formal legalist writers assert that under the federal constitution only non-resident enemy aliens or those actually enlisted in military or naval forces are subject to court martial even during a national war.[1] If this is so, neither native American nor naturalized enemy spies, secret agents or sympathizers, or even resident enemy alien spies or secret agents are subject to court-martial, and U. S. Revised Statutes, §1343, making all spies native or foreign exclusively punishable by court-martial, might be unconstitutional.

Doubtless these pacificists and formal legalists are ignorant of the fact that Prussia's invisible army of spies is as much a Prussian army and is at least as dangerous to Prussia's enemies as Prussia's visible army or navy is. Stieber, the chief of the Prussian spies in the wars of 1866 and 1870, says in his memoirs that in the presence of von Bismarck, he told an officer of the Prussian general staff that his (invisible) army of 30,000 Prussian spies was as much a Prussian "army" as the (visible and much larger) "fighting army" of von Moltke, and that von Bismarck tacitly admitted it.[2]

(1) The effect of war on constitutional liberty, 24 Case and Comment, 3-6; note at foot of p. 3; Unconstitutional Claims of Military Authority, 24 Yale Law Journal, 189; 5 Journal Criminal Law and Criminology, 718.

(2) Lanoir, German Spy System in France, 70-72.

I venture to state my views in opposition to these gentlemen's theories. They apparently overlook the fact that in a national war with a first-class power, it may not be possible to win the war without court-martialling all enemy spies and some enemy sympathizers.

I have ignored the fact that prior to 1862 under Acts of Congress no American, whether native or naturalized, could be punished for spying. Events in 1861 and 1862 forced the adoption of the usage of other nations in this respect. The theorists are aware of this fact, but I prefer to let them emphasize it if they care to do so.

During a national war with any first-class power the Federal Constitution does not inure to the benefit of the public enemy, of spies, or of enemy sympathizers, whether native or foreign. All spies should be forthwith tried by court-martial, and if convicted, shot.[3] Enemy sympathizers after conviction by court-martial should be either confined at hard labor during the war or else should be deported to the enemy, as was Vallandigham.

In 1863 Vallandigham, the state leader of a great party in Ohio, publicly sympathized with the confederacy. Ohio was not at that time invaded. The courts were open. Vallandigham was tried by court martial, was convicted of sedition and sympathizing with the confederacy, and was sentenced to confinement in a fortress during the war. The Supreme Court refused to interfere.[4]

By way of commutation of sentence he was then deported to the confederacy.

In 1904, Peabody, then Governor of Colorado, declared a county to be in a state of insurrection and ordered one Moyer to be arrested as a leader of the outbreak and detained by the national guard until he could be safely discharged and then delivered to the civil authorities. This was done purely as a military arrest and confinement without any civil process. It does not ap-

(3) U. S. Revised Statutes, § 1343.

(4) Ex parte Vallandigham, I Wall. 243, 251-4.

pear that the civil courts in the county were closed during the insurrection. After the termination of the insurrection Moyer sued the former governor, the former adjutant general of the national guard, and the captain of the company which arrested and confined him, for an alleged imprisonment.

The Supreme Court unanimously upheld the acts of the governor and the militia.[5]

In 1901, during the Boer war, a South African was arrested by order of the military authorities, removed 300 miles from his home and confined in a civil jail by order of the military in a district in which while martial law prevailed the civil courts remained open. The Privy Council upheld the arrest and confinement.[6]

In 1902, during the Boer war, convictions of imprisonment at hard labor and fines under martial law by an administrator of martial law for acts contravening martial law regulations against sedition and unlawful travel and removal, were upheld though made by the same person who was also the civil magistrate and whose civil court was open at the time.[7]

In 1914 a New Zealand reserve officer not in actual service went to Samoa after its capture and after all German resistance had ceased, and violated war regulations by exporting gold coin from Samoa, carrying personal letters from German prisoners there to their friends interned in New Zealand and carrying photographs of captured German wireless station as well as manuscript for the editors of two New Zealand papers. He was taken back to Samoa, tried there before a military court, convicted and sentenced to five years' imprisonment in New Zealand. The New Zealand Supreme Court upheld the conviction and sentence.[8]

(5) Moyer v. Peabody, 21 U. S. 78.
(6) Ex parte Marais, A. C. (1902), 109, 114-6.
(7) Atty. Genl. v. Van Reenen, A. C. (1904), 114, 118-9.
(8) Re Gaudin, 34 New Zealand L. R. 401.

In 1916 a South African was arrested for violating a martial law regulation forbidding seditious language and held for trial before a special military court. The Boer rebellion in South Africa did not break out until after the alleged sedition was committed and the civil courts remained open.

The Supreme Court of South Africa refused to inquire into the matter or to restrain the military court from trying all those charged with violating the martial law regulations, notwithstanding that the civil courts remained open.[9]

In 1914 an Australian statute authorizing the detention and confinement in military custody during the war of any naturalized person whom the minister of defense believed to be disaffected or disloyal without the production of any evidence whatever, was upheld on the principle of the necessity of a dictatorship during a national war.[10]

In 1818, after the Mahratta Government at Poona had been overthrown, the Peishwa (or native absolute sovereign) surrendered and his country was conquered. Lord Elphinstone, the commissioner commanding the occupied territory, seized the treasure and account books in the custody of the late treasurer of the native government. Hostilities had ceased and the civil and criminal courts of the East India Company were open. The treasurer's executors recovered judgment for what the Municipal Court of Bombay held was the private property or private treasure of the native ruler, as well as the treasurer's own property, which had been blended with the private treasure. The Privy Council held that no civil court had

(9) Krohn v. Minister for Defense, South African L. R. (1915), Appellate Division, 191, 197-212.
(10) Lloyd v. Wallach, 20 Commonwealth L. R. 299, 310-311.

jurisdiction, that recourse could only be had to the Government of India for redress.[11]

The Milligan case is not in point. The only question actually there decided was the legal but not constitutional question that the statute relied upon as a basis for the military courts did not in fact give authority to establish them in the places where they were set up.

The militaristic feudalism which has wantonly attacked us in the course of its struggle for world power or downfall, justifies its attempt to conquer the world by asserting that all free governments are disintegrating; that all free people are either corrupt, decadent or degenerate; that treaties, international law and constitutions are all alike nothing but scraps of paper; that feudalism, with its war lords, Krupps, spies and cannon fodder, is so superior to all free governments and all free people; that it is above all laws, divine, international or human; also it asserts that no free government or free people have any rights which feudalism is bound to respect.

Any who assert that the federal Constitution inures to the benefit of spies, secret agents of or sympathizers with the public enemy, must claim that the framers intended the Constitution to aid feudalism to conquer freedom. Any who assert that the spies of any sympathizers with a public enemy who desires to conquer and plunder us as Cortez did to Mexico and Pizarro did to Peru are entitled to the protection of the Constitution, must believe that the Constitution intended to limit and restrict the war power so as to deprive the nation of all means of defense.

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(11) Elphinstone v. Bedreechund, 1 Knapp, P. C. 316, 360-1.

LIABILITY FOR INJURIES TO BYSTANDERS WATCHING PROGRESS OF WORK.

The general rule is that a bystander, idler, or person who, in entering upon premises, is actuated by mere curiosity or interest in some process being carried on upon the premises, must be considered as a trespasser or bare licensee, in the absence of express or implied invitation to go upon the premises. It follows that the only duty owed to such person is that of not inflicting willful or wanton injury.

A very recent case supporting this view, and citing a number of American and English authorities, is that of Shafer v. Tacoma Eastern Railroad Company.[1] An attempt was being made to raise a derailed engine, and the operation attracted many passers-by, who crowded in upon the workmen until it was necessary for a police officer to drive them back, warning them of the danger. Appellant, who resided near the scene, finally took a position on the edge of the borrow pit, some 50 feet away from the derailed engine, and just off from the railway company's right of way. The method employed to raise the engine was to attach a cable from the wrecking train to the boiler and then pull toward the track with a rolling movement. In placing the cable around the engine boiler it was placed back of some lugs against which, on one of the pulls, the cable slipped. On making another pull the lug snapped and was hurled to where appellant was standing, inflicting the injuries complained of.

Plaintiff contended that his right of action was based upon the rule that those engaged in the use of machinery must use a proper degree of care to prevent injury to persons on adjoining property, and those passing on adjoining streets; but it was held that this rule had no application to the case in question, because of the lack of important essentials—failure to warn and

(1) 157 Pac. 485, L. R. A. 1916F, 114.

lack of knowledge of the dangerous situation. Not only was the warning given, but plaintiff in his testimony in the court below admitted that mere curiosity attracted him to the scene. He testified:

"I came over to see what was going on. I went out there to see something unusual, something great. I expected to see a demonstration; see something different from what I usually saw about lifting things. In the lifting of a big thing like that there was an element of danger connected with it; that something might break or give way that I would be apt to see if I was around in a safe place."

The Supreme Court of Washington, in denying appellant's appeal from judgment of nonsuit, said:

"Appellant was a mere licensee or volunteer, and his presence at the spot where he was injured is best understood by referring to his testimony previously quoted. It is this that determines the law against him. He appreciated the presence of danger, which means that the law charges him with the natural results of the thing he appreciated and understood. Knowledge of danger is, in law, knowledge of the dangerous results naturally and proximately flowing from that danger. * * * From his own testimony it is clear that appellant knew and appreciated the dangerous situation. In fact, that was one of the attractions exciting his curiosity and inducing his presence. Knowing he was submitting himself to a known danger would be a voluntary submission to the natural and proximate results flowing from that danger.

"In determining respondent's negligence, we must determine the duty it owed to appellant, since negligence occurs only where there is a breach of legal duty. Not failing in this duty, responsibility for appellant's injury cannot be fastened upon respondent."

The appellant in this case further contended that his cause of action was analogous to those where persons upon adjoining property are injured by articles thrown from moving railway trains, but this contention was thus answered by the court:

"Negligence in those cases is predicated upon the duty of a railway company to keep its trains and other dangerous instrumentalities upon and within its right of way. This duty is due not only to owners of adjoining property, but to those who may be upon such property, anticipating no danger, and relying upon the duty of the railway company to protect them. The law always requires of any property owner the exercise of ordinary care in the use of his property and the agencies operated thereon, so as not to injure property or persons on abutting premises; but that duty is not extended to those who voluntarily and knowingly make themselves a part of a dangerous situation, attracted by no motive other than curiosity or amusement. Such persons must take the risk as they find it, and cannot successfully complain of the unskillfulness or lack of due care on the part of those engaged in the work."

Workmen were employed in excavating the earth for the foundation of a building, in the English case of Batchelor v. Fortescue[2] (1883). In the performance of the work they used a steam crane and winch, to which was attached an iron bucket. The deceased was standing by, watching the men at work, when the iron bucket, in consequence of the breaking of the chain, fell upon him. It was held that there could be no recovery, for the reason that the deceased voluntarily subjected himself to all the risks attending his presence upon the scene.

In Downes v. Elmira Bridge Co.,[3] it is said:

"When one enters a place where work is going on, and he knows the nature of the work and the condition of the place, even if many others have been suffered to go there before him, he takes the risk of the operations of the workmen, who cannot reasonably be required to give further notice than the situation itself affords. Dangerous work in plain sight is notice to a mere licensee."

A person standing upon the railroad company's land for the purpose of seeing a mail crane in operation, in the West Virginia case of Poling v. Ohio River R. Co.,[4] when the arm of the crane broke, and the observer was injured thereby. The court in its opinion stated that, as a mere li-

(2) L. R. 11, Q. B. Div. 474.
(3) 179 N. Y. 136, 71 N. E. 743.
(4) 38 W. Va. 645, 24 L. R. A. 215, 18 S. E. 782.

censee, he was subject to the concomitant risks and danger of injury thus assumed, and the company did not owe him the duty of keeping the mail crane in suitable and safe condition; that the railroad company was liable only for such wanton injury as might be done to such licensee by the gross negligence of the company, its servants and employes. Continuing, the court said:

"A mere sightseer, on no other business, goes into any one of the large modern factories in operation throughout the civilized world. It requires great care and watchfulness on his part, unfamiliar as he is with such places and things, to avoid danger and escape injury, although the place is reasonably safe and fit, and everything is carried on with due ordinary care; but unless there is wanton injury, the result of gross negligence, the owner is not liable. Why? The owner has set no trap for him; he did not induce, but only permitted, him to come; he is not there on business; the place and appliances belong to the manufacturing company; it was fixed for them and their employes; it suits them; by their knowledge and skill they avoid danger, though to those unskilled and unfamiliar it may be dangerous—dangerous to anyone, in fact; but it was not made for, and is not carried on for, any purpose with which the licensee has anything to do; if the injury is not wanton, the negligence is not gross, and the company is not liable, for it owed him no other duty, and that one has not been violated."

Chief Justice Stone of Alabama, in Montgomery & E. R. Co. v. Thompson,[5] after referring to the common law duty resting upon all persons who own real estate on which the public is impliedly or expressly invited to enter that it shall be kept free from pitfalls, etc., and stating that all the property of a railroad, including its depots and adjacent yards and grounds, is its private property on which no one is invited or can claim the right to enter save those who have business with the railroad, says:

"The rule of obligation is essentially different when the asserted rights of mere idlers, or sight-seers, are presented. To such the corporation owes nothing, beyond the observance of the duties of good neighborhood."

Plaintiff in the case of Indian Refining Co. v. Mobley (Ky.),[6] applied to one of defendant's officers for permission to go through defendant's works and solicit insurance, which being granted him, plaintiff on several occasions wrote the insurance for defendant's employes. On the day plaintiff was injured he went into defendant's boiler room to solicit insurance from one of defendant's servants employed there, in accordance with such permission, and while there was injured by the explosion of the steam pipe resulting from its negligent construction. It was held that plaintiff was only a licensee, as to whom the defendant owed no duty except to refrain from willful acts of injury, and was therefore not liable for his injury.

In the Massachusetts case of Moffatt v. Kenny,[7] Knowlton, J., says:

"Of course the land-owner is liable if he does him (the licensee) an intentional injury, or wantonly or recklessly exposes him to danger. * * * But we are of opinion that an owner is under no liability for an unsafe condition of his premises caused by a mere failure to use ordinary care for the safety of persons who may chance to go there by permission while he is using the place for his own proper purposes, and is not intending needlessly to expose others to danger. Otherwise there would be no important distinction between his duty to licensees and his duty to invited persons." (Citing Zoebisch v. Tarbell, 10 Allen 385, 87 Am. Dec. 660; Plummer v. Dill, 156 Mass. 426, 32 Am. St. Rep. 463, 31 N. E. 128, and cases cited.)

The same principle has been applied in the case of machinery in action in the course of the licensor's business.[8]

(5) 77 Ala. 448.

(6) 121 S. W. 657.

(7) 54 N. E. 850, 851.

(8) Bolch v. Smith, 7 Hurlst. & N. 742, 37 L. J. Exch. N. S. 201; Griffiths v. London & N. W. R. Co., 14 L. T. N. S. 797; Batchelor v. Fortescue, supra; Tolhausen v. Davies, 57 L. J. Q. B. N. S. 395; Larmore v. Crown Point Iron Co., 101 N. Y. 391, 54 Am. Rep. 718, 4 N. E. 752; Weitzman v. A. L. Barber Asphalt Co., 190 N. Y. 452, 123 Am. St. Rep. 560, 83 N. E. 477.

In the case of Larmore v. Crown Point Iron Co., just referred to, defendant was operating a machine for raising ore from its mine. The machine consisted of an upright or mast in which a lever was inserted, and the machine was worked by attaching horses to the lever, by which means a bucket was raised and lowered. While the bucket was being lowered, the lever, as a result of insecure fastening, was thrown out of the socket, and flying rapidly around, struck the plaintiff, a mere licensee. It was held in an able and lucid opinion that the defendant owed the plaintiff no duty to use ordinary care to see that the lever was properly fastened, and a verdict which had been rendered in the trial court for the plaintiff was set aside.

A boy, a licensee, in the Weitzman case, was struck upon the head by a barrel which, suspended by a rope, was being drawn from one part of the premises to another. It was held that the defendant did not owe to the licensee the duty to take sufficient precaution to warn the plaintiff of the danger.

In O'Brien v. Union Freight R. Co.,[9] Mr. Justice Hammond, in delivering the opinion of the court, said:

"As to trespassers and licensees the well settled rule is that the only duty of the owners or occupiers of land is to abstain from inflicting intentional or willful or wanton injuries. * * * The great weight of authority seems to be that as in the case of land so in the case of appliances thereon where danger is not concealed, the owner or occupier of the premises owes no duty to a mere licensee to take proper precautions to protect him, but is answerable only for injuries inflicted wantonly or willfully. And this is so whether the licensee falls against the appliance, or whether, by reason of the lack of ordinary care of the owner to keep it in repair, the appliance or some part of it strikes him."

In Cleveland, C., C. & St. L. R. Co. v. Ballentine,[10] a boy of seventeen and a half years, impelled by curiosity, went upon the premises of a railway company to observe the burning of a train of tank cars, and voluntarily rendered assistance in preventing the spread of the fire to other property. He was injured by the explosion of one of the cars, the fire having been caused by the negligent misplacing of a switch. The court held that this negligent act or omission as to misplacing the switch was not in breach of any duty owed to Ballentine, inasmuch as he was two miles away at the time, and came upon the scene afterwards as at best a mere licensee, bound to take things as he found them, and assuming the risk of the situation. The court said:

"Ballentine, impelled by curiosity to witness a great conflagration, went upon the grounds of the railway company, to the scene of it, in the face of obvious danger of explosion. He went without inducement or invitation, without legal right, and assumed the perils of the situation. He voluntarily and negligently exposed himself to danger. *'Volenti non fit injuria.'* The railway company owed him no active duty—only the duty to abstain during his presence on the premises from positive wrongful act which might result in injury to him."

In addition to the authorities referred to, the following may be mentioned as supporting the proposition that the duty owed to a mere bystander or sight-seer, watching the progress of work, is merely that of refraining from willful and wanton injury:[11]

Cases of this sort are to be distinguished from those which fall into the class governed by the so-called "attractive nuisance doctrine," which deals with children not sufficiently mature or discreet to have legal capacity to assume a risk. This distinction is clearly drawn in the case of Wilmes v. Chicago Great Western Ry. Co., last above referred to. L. E. J.

(9) 209 Mass. 449, 95 N. E. 861, 36 L. R. A. (N. S.) 492.

(10) 84 Fed. 935.

(11) Metcalfe v. Cunard S. S. Co., 147 Mass. 66, 16 N. E. 701; Currier v. Dartmouth College, 117 Fed. 44; Kroeger v. Grays Harbor Const. Co. (1914), 83 Wash. 68, 145 Pac. 63; Dooley v. Mobile & O. R. Co., 69 Miss. 648, 12 So. 956; Waterman v. Shepard, 21 R. I. 257, 43 Atl. 66; Benson v. Baltimore Traction Co., 77 Md. 535, 20 L. R. A. 714, 39 Am. St. Rep. 436, 26 Atl. 973; King v. Northern Nav. Co. (1912), 27 Ont. L. Rep. 79, 6 D. L. R. 69; Wilmes v. Chicago, Great Western R. Co. (1916, Wash.), 156 N. W. 877.

CORPORATION—SURETYSHIP.

ZURN et al. v. MITCHELL et al.

Court of Civil Appeals of Texas. Ft. Worth. April 14, 1917. On Motion for Rehearing, May 22, 1917.

196 S. W. 544.

Although sureties on bonds to a corporate obligee are liable even though the transaction may be ultra vires as to the corporation, the sureties on an indemnity bond given for the performance by a corporation of a contract which was positively forbidden by statute law, and hence absolutely void, were not bound.

CONNER, C. J. Appellants, Jake F. Zurn, Mrs. Mary M. Harold, and Mrs. Josie H. Barnes, as executrices of the estate of E. B. Harold, deceased, suffered a judgment in the sum of $1,926.83, principal and interest, upon an indemnity bond given to secure the performance of a contract on the part of the Hydraulic Building Stone Company, a corporation, to construct for appellee certain improvements upon one of his lots in Ft. Worth, Tex. As alleged and found by the court, the Hydraulic Building Stone Company was duly incorporated under the laws of the state of Texas, with purpose, as stated in its charter, as follows:

"The purpose of this corporation shall be to manufacture and deal in building material and to purchase and sell such material as is necessary in the transaction of its business."

The contract for breach of which appellee sued, provided, among other things, that the Hydraulic Building Stone Company should, according to certain drawings and specifications, "well and sufficiently perform * * * all the work included in the excavating, grading, cement floors, brickwork, concrete blocks and footing (foundation walls to be of 12-inch concrete blocks instead of solid concrete) of the two-story and basement residence on Pennsylvania and Eighth avenues in the city of Ft. Worth." The work so contracted for was never materially commenced or completed by the corporation, and the court finds that the contract on the part of the corporation was beyond the purposes for which the corporation had been created, and was therefore as against the corporation, ultra vires and void. The corporation subsequently was discharged from all liability for its said breach of the contract by the judgment rendered, and of all this, appellee makes no complaint.

Appellant's contention on this appeal from the judgment against said sureties on the indemnity bond is that, inasmuch as the court found the contract to be ultra vires and void, it was error in the court to render judgment against the sureties on the indemnity bond. Appellees, however, while admitting that the contract of the corporation was ultra vires and void as to the corporation, insists that nothing beyond this can be said; that an agreement on the part of sureties guaranteeing the performance of a contract merely ultra vires, is binding upon the sureties, even though not binding upon the principal; and appellee cites in support of his contention and of the court's judgment the following authorities: Revised Statutes, art. 1164; Railway Co. v. Gentry, 69 Tex. 625, 8 S. W. 98; Edwards County v. Jennings, 89 Tex. 618, 35 S. W. 1053; Lee v. Yandell, 69 Tex. 34, 6 S. W. 665; Logan v. Loan Ass'n, 8 Tex. Civ. App. 490, 28 S. W. 141; Walters v. Loan Ass'n, 8 Tex. Civ. App. 500, 29 S. W. 51; Texas Loan Agency v. Hunter, 13 Tex. Civ. App. 402, 35 S. W. 399; Kincheloe Irrigation Co. v. Hahn, 105 Tex. 231, 146 S. W. 1187; Taylor Feed Pen Co. v. Bank, 181 S. W. 534; Lancaster Township v. Graves, 48 Ind. App. 499, 96 N. E. 172; Davis v. Stokes County, 72 N. C. 441; Mason v. Nichols, 22 Wis. 376; Harris v. Gas Co., 76 Kan. 750, 92 Pac. 1123, 13 L. R. A. (N. S.) 1171; Gist v. Drakely, 2 Gill (Md.) 330, 41 Am. Dec. 426; 20 Cyc. 1422; 7 Cyc. 663.

The direction to be given to the appeal must turn, we think, upon a determination of whether the contract of the Hydraulic Building Stone Company was merely ultra vires—that is, one voidable merely because it was beyond the purposes defined in the charter—or whether such contract was void altogether for all purposes and as to all persons. It has been held in many cases that sureties on bonds to a corporate obligee are liable, even though the transaction may be ultra vires as to the corporation. So, too, sureties upon the bond of a minor or of a feme covert, or of one non compos mentis, are bound, and to such effect, generally speaking, are the cases cited by appellee. But it is equally well settled, we think, that the agreement of a surety is not binding where the contract between the primary parties out of which it springs is contaminated by positive illegalities.

Amended article 1164 of our Revised Statutes provides, so far as necessary to state, that:

"No corporation, domestic or foreign, doing business in this state shall employ or use its stock, means, assets, or other property, directly or indirectly, for any purpose whatever, other than to accomplish the legitimate business of its creation," etc.

See General Laws, 34 Legislature p. 156.

The record, as we think, leaves no room to

doubt that the contract between appellee and the Hydraulic Building Stone Company was in violation of this statute. The court not only finds that the contract was ultra vires, but the evidence shows that the performance of the contract would involve the necessary expenditure of considerable sums of money for labor, material, etc., other than that necessary in the manufacture, or the purchase, or sale of material in the transaction of the business of the corporation. In supplying such additional sums the corporation of necessity would be required to "use its stock, means, assets, or other property," directly or indirectly in violation of the article of the statute referred to. The contract, therefore, as we conclude, was affected with a positve illegality which rendered it void for all purposes and as to all persons. See Revised Statutes 1911, art. 1164; Edwards County v. Jennings, 89 Tex. 621, 35 S. W. 1053; Republic Trust Co. v. Taylor, 184 S. W. 773; Brenham v. Water Co., 67 Tex. 561, 4 S. W. 143; Levy v. Wise, 15 La. Ann. 38; Lancaster Township v. Graves, 48 Ind. App. 499, 96 N. E. 172; Schaun v. Brandt, 116 Md. 560, 82 Atl. 551; First National Bank v. Clark's Estate, 59 Colo. 455, 149 Pac. 612; Denison v. Gibson, 24 Mich. 187; Tandy v. Elmore-Cooper Live Stock Com. Co., 113 Mo. App. 409, 87 S. W. 616.

The simple citation of the above authorities would perhaps be all that is necessary to do, as the principles involved are therein fully discussed, and what we could say would, in a measure, be largely mere repetition; but for the sake of clearness it may not be amiss to here add that in the case of Edwards County v. Jennings, supra, it was held by our Supreme Court that the sureties for the performance of a contract between the county and Jennings, which was in violation of our Constitution and laws against monopolies, were not bound. The court makes clear the distinction between contracts which are merely ultra vires—that is, contracts that merely extend beyond the charter purposes or powers—and those which are not only beyond such purposes or powers but also positively forbidden, as here, by some statutory or constitutional law. The statute quoted had in view the protection of the stockholders of corporations. It was part of the law of the land and, in contemplation of law, was known to appellee at the time he entered into the contract with the Hydraulic Building Stone Company, and it must be held that, in a legal sense, he then knew that the contract was forbidden. In the case of the Republic Trust Co. v. Taylor, cited above, the Dallas Court of Appeals held that a promissory note was void, even in the hands of an innocent purchaser, which had been given for stock in a corporation in violation of the Constitution, art. 12, § 6, declaring that no corporation shall issue stock except for money paid, labor done, or property actually received. Other illustrations doubtless could be given, but we think the authorities cited and what we have said sufficiently support the conclusion already stated.

It follows that the appellant sureties, in our opinion, were not bound upon the indemnity bond given by them, and that other questions presented upon this appeal need not therefore be discussed. The trial court's findings of fact not inconsistent with what we have hereinbefore stated are, accordingly, adopted; but thereon the judgment will be reversed and here rendered for appellants.

Reversed and rendered.

NOTE.—*Surety on Void Contract of Corporate Principal.*—It generally has been held that one who becomes surety for a person who is incapable of contracting is nevertheless obligated. In Gates v. Tebbetts, 83 Neb. 573, 119 N. W. 1120, 20 L. R. A. (N. S.) 1000, in the opinion by the court and in an elaborate note thereto in L. R. A. (N. S.) 1000, the authorities to this effect are said to be almost universal. In the case of a person it is said the defense is personal and for this very reason it may be that a surety has been required. In Winn v. Sanford, 145 Mass. 302, 14 N. E. 119, 1 Am. St. Rep. 461, it was said: "Where one becomes a surety for the performance of a promise made by a person incompetent to contract, his contract is not purely accessional, nor is his liability necessarily ascertained by determining whether the principal can be made liable. Fraud, deceit in inducing the principal to make his promise, or illegality thereof, all of which would release the principal, would release the surety, as these affect the character of the debt; but incapacity of the principal party promising to make a legal contract, if understood by the parties, is the very defense on the part of the principal against which the surety assures the promisee." Is the principle in the last clause modified by the fact, that the contract is by a corporation not merely *ultra vires* but absolutely forbidden by law to be entered into, as the instant case decides?

In Weare v. Sawyer, 44 N. H. 198, there was a promissory note signed by a school district as principal and by one of defendants as surety. The court said: "There can be no question that the district, at the time the money was hired and the note given in their behalf had power under the statute, to hire the money and give the note. * * * The money has been received by the authorized agents of the district and applied to the use of the district. * * * This is not the case where an agent has attempted to involve the district in an unauthorized amount of expense." This is said *arguendo*, but what would be the effect on the obligation of the surety is merely suggested.

But the court, further arguing, says: "It is laid down in respect to infants, married women and

other persons incompetent to contract, that the surety must respond, and we see no reason why the same doctrine does not apply to the case of a want of authority." This remark applied to want of authority by an agent and not want of power by a principal to contract.

In Poindexter v. Davis, 67 N. C. 112, it was held that where a county contracted a debt during the civil war for the purpose of equipping soldiers for the Confederate service, its bond for money to pay such debt was valid. Both the county and its surety were held liable because the illegality was remote. But afterwards the surety sued for reimbursement (Davis v. Commissioners, 72 N. C. 441), and recovery was denied. The language in the case suggests it was by a judge in the reconstruction era. It was said: "While the county court had no power to give the bond, the plaintiff Davis had the power to do it; and there being no moral or political turpitude he is bound by it. But when he calls upon the people of Stokes County to reimburse or indemnify him, they have the right to answer that he was not their surety."

In Maledon v. Leflore, 62 Ark. 387, 35 S. W. 1102, it was claimed surety was not liable because board of directors had no right to execute the note for which he was sued upon as surety. The court said such a defense was not tenable "for the reason that a surety is as a general rule liable on a note executed by him as such, although his principal has no capacity or authority to make such a contract. The rule has frequently been applied in cases where the principal was an infant or married woman, and we see no reason why it should not apply when the note is executed by a corporate principal without proper authority."

In Yorkshire Ry., etc., v. Maclure, 19 Ch. D. 478, the question was treated of surety on an illegal contract by a corporation and it was held that though this as a defense was available both in law and equity to the corporation, nevertheless the sureties were liable thereunder. Reference was made to Chambers v. Ry. Co., 5 B. & S. 588, wherein Lord Blackburn said: "The plaintiff had become security for a loan to the company by signing a joint promissory note. When the note became due the bank had a right to come upon him and the co-surety, but he could not have sued the company for money paid to their use; he paid it to discharge a loan which was not contracted by the company in compliance with restrictions imposed by their act." The case using this excerpt says: "Lord Blackburn does not doubt the right of the lender to recover against the sureties, although the loan was to a railway company which could not borrow. Probably the very reason for requiring the guarantee was the doubt that existed whether the company could be compelled to repay the money."

It is to be noticed that in the cases regarding incapacity of persons to contract this very reason is given for holding the surety liable. It seems to us, therefore, that unless there is some immorality or policy antagonistic to law in holding the surety liable, there is no difference in a surety for a corporation upon an absolutely void contract and one where he signs for a person having no capacity to contract. C.

CORRESPONDENCE

RESPECT FOR LAW FUNDAMENTAL IN A DEMOCRACY.

Coeur D'Alene, Idaho, Aug. 7, 1917.

Editor Central Law Journal:

I desire to commend your very excellent article in the Journal for August 3rd upon "Respect for Law Fundamental in a Democracy," by Judge Wade.

How very great is the need of such instruction has been brought vividly home to us during the past two or three months. As you know, this section has been the hot-bed for I. W. W. agitation during the past few weeks. Because of their ignorance and unfamiliarity with the real good in American institutions many men fall easily a prey to the agitator. We may not be able to save these men but it is possible to save the schoolboys of to-day from following their lead.

Judge Wade's program is excellent; but to begin with the high school is not even soon enough. Adapt it to the boys and girls in the eighth grade, who may never see high school. Good citizenship is so fundamental to the life of a republic that there is no place where such teaching is too early.

Very truly yours,

M. G. WHITNEY.

Coeur D'Alene, Idaho.

OBLIGATION OF MORTGAGEE TO PAY INSURANCE PREMIUM WHERE MORTGAGOR DEFAULTS.

Editor Central Law Journal:

Referring to 85 Central Law Journal 68, Home Insurance Co. v. Union Trust Co., it seems to me that this case is wrongly decided. I believe that the following statement in Cooley's Briefs on Insurance, page 916, is a correct statement of the law:

"If a policy delivered to the mortgagee contains a clause providing that no negligence on the part of the mortgagor shall invalidate the insurance, and that in case the mortgagor refuses and neglects to pay any premiums due, the mortgagee shall pay it on demand. This amounts to a contract on the part of the mortgagee to pay the premium on the mortgagor's default, and not merely a condition on the performance of which he may at his option entitle himself to the benefit clause."

The best reasoning of any case on the subject, it seems to me, is the case in 50 North-

western 702, St. Paul, etc., v. Upton, cited by you, and the point of that case is this—the mortgagee gets two valuable considerations:

1. The mortgagee gets insurance.

2. It gets insurance in such form as not to be invalidated by certain acts of the mortgagor which usually avoid liability on insurance policies.

These considerations the mortgagee gets from the moment the policies are delivered to it, and hence it is sheer nonsense when the time comes for payment, for the mortgagee to be allowed to decline, for the simple reason that it has already received valuable consideration.

In seizing on the word "providing" and working out an artificial result on the theory of condition, the courts have hardly done themselves credit on the subject matter in cases similar to the present. As a matter of fact, a mortgagee can always protect itself when it pays the premiums, as it has a lien on the mortgaged premises, not only for the amount of the mortgage and interest, but also for any payments made, while the insurance company has no lien whatever.

Very truly yours,

WALTER H. BUCK.

Baltimore, Md., Aug. 6, 1917.

NOTE.—Our annotation disputes the correctness of the conclusion in the case referred to. We are in accord with our correspondent in regard to the ruling being based too greatly on verbal terms rather than on the intent in view. There surely ought to exist some consideration moving to the insurance company from the mortgagee, and the way the case criticised by our correspondent was decided appears to us to ignore this feature.

EDITOR.

AN INQUIRY.

August 1, 1917.

Editor Central Law Journal:

I inquire if you can name the author of this expression: "This is a Government of Law and not of Men," and give the text in which the expression is found?

If the author is living, I want him to admit his mistake before he departs this life; and if he is dead we ought to honor him for his distinguished ability to make men believe in the unreal.

H. HALDERSON.

Newman Grove, Neb.

[ED. NOTE.—Will some subscriber furnish our correspondent the information he seeks?]

HUMOR OF THE LAW.

During the impaneling of a jury in Philadelphia the following colloquy ensued between the judge and a talesman:

"You are a property holder?"

"Yes, sir."

"Married or single?"

"Married three years last March."

"Have you formed or expressed any opinion?"

"Not for three years, your Honor."

Admiral Walter McLean, U. S. Navy, speaking of a dinner party, said that there had been serious discussion as to whether there were not times in advance of marriage, when a young man should be privileged to kiss a young woman.

"Don't you think," asked one of the guests, "that when a young man buys grand opera tickets, spends $8 for a supper after the performance, and then takes her home in a limousine, he should kiss her good-night?"

"I certainly do not!" said the confirmed bachelor. "It seems to me that he has done enough for her."

In a recent speech at the American Irish Historical Society's dinner in New York, Irvin S. Cobb told a story about an Irishman. This Irishman on Sunday heard a clergyman preach on the judgment day. The priest told of the hour when the trumpet shall blow and all peoples of all climes and all ages shall be gathered before the Seat of God to be judged according to their deeds done in the flesh. After the sermon he sought out the pastor and he said, "Father, I want to ask you a few questions touching on what you preached about to-day. Do you really think that on the judgment day everybody will be there?"

The priest said: "That is my understanding."

"Will Cain and Abel be there?"

"Undoubtedly."

"And David and Goliath—will they both be there?"

"That is my information and belief."

"And Brian Boru and Oliver Cromwell will be there?"

"Assuredly they will be present."

"And the A. O. Hs. and A. P. As.?"

"I am quite positive they will all be there together."

"Father," said the parishioner, "there'll be little judgin' done the first day."—Current Opinion.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.

1. **Adverse Possession**—Claim of Right.—That strip of land was used for dumping refuse from quarry, that marble blocks were placed thereon, or that guys and ropes or cables were maintained upon same, would not give title by adverse possession where such occupancy was not under claim of right.—Vermont Marble Co. v. Eastman, Vt., 101 Atl. 151.

2. **Arrest**—Resistance to Officer.—Where person being arrested without warrant has knowledge of official character of officer, and is engaged in actual commission of public offense, officer's duty is to make arrest, and citizen's duty is to submit; if officer is resisted, he has right to use force necessary to accomplish arrest and protect himself, but no more.—Tarwater v. State, Ala., 75 So. 816.

3. **Attorney-General**—Statutory Authority.—Under Acts 1915, p. 719, authorizing the Attorney-General to direct a solicitor of one circuit to prosecute cases in another, no written order is required to show the authority of such visiting solicitor.—Jones v. State, Ala., 75 So. 830.

4. **Assault and Battery**—Chastisement by Teacher.—Custom for superintendent of schools of city to chastise pupils existed in violation of principles of civil law and of provision of Criminal Code denouncing use of unlawful violence upon another's person, and custom was not defense to superintendent when sued for assault by pupil whom he chastised.—Prendergast v. Masterson, Tex., 196 S. W. 246.

5. **Bankruptcy**—Ancillary Proceeding.—Proceeding to impress trust on cotton, as to which ancillary proceeding by trustee was pending, held not within jurisdiction of the court, after such ancillary proceeding terminated adversely to the trustee.—Jaffe v. Pyle, U. S. C. C. A., 242 Fed. 67.

6.——Deficiency.—The trustee in a mortgage given by a corporation to secure an issue of bonds, who has foreclosed upon and sold the mortgaged property, cannot prove a claim for a deficiency against the estate of the mortgagor in bankruptcy.—In re A. J. Ellis, Inc., U. S. D. C., 242 Fed. 156.

7.——Trustee.—Under Bankruptcy Act, § 45, upon appointment of trustee by referee, person held not ineligible merely because he was one of the unsuccessful candidates voted for by the creditors.—In re F. & D. Co., U. S. C. C. A., 242 Fed. 69.

8. **Banks and Banking**—Capital.—Capital of bank held not paid in cash, and bank's authority to do business fraudulently obtained, where capital was represented principally by credit with another bank, which was to be charged off on demand.—McKinney v. United States Nat. Bank of Centralia, U. S. C. C. A., 242 Fed. 48.

9.——Notice.—Knowledge of cashier of bank discounting notes that payee indorser was in danger of going into receivership did not prevent bank from becoming a holder in due course, where cashier did not know of outstanding contract with the payee for which note was given.—People's Nat. Bank of Tarantum, Pa., v. Cramer, N. J., 101 Atl. 204.

10.——Notice.—A bank, which received money from a depositor under circumstances which charged it with notice that it was a trust fund, held liable to the beneficiary for so much of the fund as it afterward received from the depositor in payment of his personal debt.—Santa Marina Co. v. Canadian Bank of Commerce, U. S. D. C., 242 Fed. 142.

11. **Bills and Notes**—Evidence.—In suit by bank on a discounted note, where the note was charged back to payee, maker's testimony showing a collateral agreement with payee was admissible.—Adair v. Bank of Hickory Flats, Miss., 75 So. 758.

12.——Indorsement.—Paper attached to note reciting that "we do hereby assign to and deposit with said bank" note "executed * * * to our order," and signed by maker, held sufficient indorsement to make instrument complete upon its face making bank holder in due course within Code 1904, § 2841, subsec. 52, in view of subsection 31.—Colona v. Parksley Nat. Bank, Va., 92 S. E. 979.

13. **Boundaries**—Latent Ambiguity.—That length of course required by second call in deed, southerly terminus of which is given as maple tree, was about 1 8-10 rods shorter than distance in deed, held not latent ambiguity.—Vermont Marble Co. v. Eastman, Vt., 101 Atl. 151.

14. **Building and Loan Associations**—Authority of Officer.—President of loan society, whom the by-laws made the chief executive officer and active manager, was authorized to accept money paid to company by cash or by check to its order, and his misappropriation of funds so paid was the society's loss.—Schwehm v. Chelten Trust Co., Pa., 101 Atl. 93.

15. **Cancellation of Instruments**—Equity.—On bill to avoid release, claim that release, if valid against releasor, is not answer to suit by his executor claiming damages for injury as to which release was given, which resulted in death of releasor, is answer at law to plea, and presents no ground for equitable intervention.—Cogswell v. Boston & M. R. R., N. H., 101 Atl. 145.

16. **Carriers of Goods**—Bill of Lading.—In action against carrier for damages to goods, bill of lading requiring written statement of loss, plaintiff must show not only that he delivered such statement, but terms of statement itself.—Erisman v. Chicago, B. & Q. R. Co., Iowa, 163 N. W. 627.

17.——Negligence.—In suit to recover value of goods which carrier had failed to deliver, proof of non-delivery upon demand made prima facie case of negligence which was not overcome by proof that after failure to deliver, goods were seen in defendant's warehouse.—Yazoo & M. V. R. Co. v. Altman, Ark., 196 S. W. 122.

18. **Carriers of Passengers**—Intoxication.—Defendant carrier could not show injured passenger's statement to another that her husband was too intoxicated to render assistance at time of accident testified to by wife, where defendant offered no evidence showing husband's condition.—Stutsman v. Des Moines City Ry. Co., Iowa, 163 N. W. 580.

19.——Invitation to Alight.—Where an infirm, aged passenger had disclosed his destination to the trainmen, statement of one of them, "Well, we are here," was not an invitation for the passenger to alight, while the train was moving.—Viviano v. San Antonio, U. & G. R. Co., Tex., 196 S. W. 267.

20.——Punitive Damages.—Where railroad conductor, upon discovering, as he thought, that plaintiff had not purchased ticket to her destination, treated her with sufficient courtesy in insisting she pay fare, etc., she could not recover punitive damages in her action against him and the road.—Mobile & O. R. Co. v. Farrior, Miss., 75 So. 777.

21.——Transfers.—Under universal transfer ordinance, street railroad's rule of refusing to issue to passenger, boarding car of one line where it crosses another, transfer to the other line at another point where the lines cross, is enforceable, where by transferring the passenger is not taking a substantially shorter route.—Curran v. United Rys. Co. of St. Louis, Mo., 196 S. W. 56.

22.——Wrongful Ejection.—Where a street car conductor wrongfully ejects a passenger and abuses him, an instruction that if he "suffered no injury thereby" he can recover only nominal damages, is erroneous because no ordinary jury would understand that the word "injury" included outrage to one's feelings and self-respect.—Hartridge v. United Rys. Co. of St. Louis, Mo., 196 S. W. 59.

23. **Commerce**—Common Carrier.—Being a common carrier within interstate commerce statutes, and engaged in interstate commerce with respect to message from Kansas to Missouri, telegraph company was governed by federal law, as applied by federal courts, to exclusion of all state laws and decisions, as to liability for mistake in transmission.—Poor v. Western Union Telegraph Co., Mo., 196 S. W. 28.

24. **Constitutional Law**—Due Process of Law.—That school district was not given opportunity to present oral testimony and make an oral argument on appeal from school inspector's order to state superintendent was not deprivation of property rights without due process of law, where there was opportunity to present all facts and arguments in writing.—State v. Cary, Wis., 163 N. W. 645.

25. **Corporations**—General Assignment.—Where corporation did not make general assignment for creditors, but made chattel mortgage or conveyance in trust to private trustee for creditors, title to cause of action against director for corruptly disposing of assets was vested in trustee.—Millsaps v. Johnson, Tex., 196 S. W. 202.

26.——Purchase of Claims by Director.—A director, while acting as such, may not lawfully buy at a discount claims against the corporation and have them allowed by the corporation or its receivers on the basis of full value.—In re Allen-Foster Willett Co., Mass., 116 N. E. 875.

27.——Receivership.—Where a company, the stock of which is owned entirely by a corporation of an enemy country is under the control of an antagonistic board of directors, a receiver will be appointed to protect the interests of the stockholders.—Posselt v. D'Espard, N. J., 101 Atl. 178.

28. **Covenants**—Estoppel.—Although acts of council in building pavilion in violation of building line restriction might estop municipality from enforcing restriction, it would not estop property owners not concerned therein.—Heyniger v. Levinsohn, N. J., 101 Atl. 189.

29. **Damages**—Aggravation of Disease.—When diseased person is injured through another's negligence, and injury aggravates and excites disease, and accelerates it to stage of disability or death, injured person or his representative has remedy at common law.—In re Bowers, Ind., 116 N. E. 842.

30.——Evidence.—In passenger's action for injuries causing miscarriage, her testimony that she had before been frequently confined, showing nature of normal delivery, was admissible to show abnormal character of the delivery in question.—Stutsman v. Des Moines City Ry. Co., Iowa, 163 N. W. 580.

31.——Profits.—Under written contract to pay architect for plans and services upon failure to construct building, he may recover for the work done such portion of entire price as the fair cost of his work bears to cost of whole work, and as to the work not done, the profits he might have realized by doing it.—Kitchell v. Crossley, N. J., 101 Atl. 179.

32.——Mental Suffering.—Mental suffering of pregnant woman consequent upon apprehension and anxiety as to effect of injury upon foetus

becomes element of damage as natural and proximate result of negligence which caused injury.—Gagnon v. Rhode Island Co., R. I., 101 Atl. 104.

33. **Death**—Release.—Where injured person had given release from all litigation arising from injuries, his executor could not maintain suit for death resulting from such injuries, under Pub. St. 1901, c. 191, §§ 8-12.—Cogswell v. Boston & M. R. R., N. H., 101 Atl. 145.

34. **Deeds**—Estate on Condition.—The word "condition" is not necessary to the creation of an estate upon condition, if it plainly appears from the words used that the intent of the parties was to create an estate of that description.—Southern Colonization Co. v. Derfler, Fla., 75 So. 790.

35.——Married Woman's Acts.—Since the adoption of the Married Woman's Act of 1899 the court cannot set aside for fraud a deed from a wife to her husband, where there is no fact shown from which the court may infer that the wife has not been fairly dealt with.—Smelser v. Meier, Mo., 196 S. W. 22.

36. **Easements**—That right of way was to be used for sleighs, and that covering it might prevent the fall of snow thereon in winter, did not impliedly prevent the owner of the servient tenement from covering it over.—Andrews v. Cohen, N. Y., 116 N. E. 862.

37. **Evidence**—Presumption.—Unless contrary is made to appear, it is taken for granted that conduct of public officers is according to law.—Nevins v. City Council of City of Springfield, Mass., 116 N. E. 881.

38. **Frauds, Statute of**—Oral Agreement.—An oral agreement by daughter of deceased to pay for funeral equipment and services performed in connection with funeral is not within statute of frauds as to actions on a special promise to answer for debt of another, where there is no contract whereby any other person became obligated to pay for such equipment and services.—Fox & Weeks v. Laney, S. C., 92 S. E. 1044.

39. **Game**—Sale.—Where prohibited game is ordered, prepared, and served as food in a hotel where meals are served a la carte, this will constitute a "sale," in violation of the Conservation Law, § 180.—People v. Clair, N. Y., 116 N. E. 868, 221 N. Y. 108.

40. **Husband and Wife**—Rebuttable Presumption.—As a rule, where a husband transfers property to his wife or causes it to be so transferred, there is a rebuttable presumption that it was a gift.—Cropsey v. Cropsey, N. J., 101 Atl. 175.

41. **Injunction**—Notice.—An announcement by judge at hearing of application for injunction that a decree would be entered as prayed, made in hearing of defendant, would sufficiently apprise defendant without service of writ.—Cooley v. District Court of Polk County, Iowa, 163 N. W. 625.

42.——Presumption.—That plaintiff, enjoining defendant's threatened sale of automobile, originally sued for its possession, with no count for its value, raises presumption that it is of some peculiar personal value, for which a merely money judgment would not adequately compensate.—Sweeney v. Alderete, Tex., 196 S. W. 367.

43. **Insurance**—Accident.—Act of setting off single firework is not change of occupation from that of gardener to that of user or handler of fireworks, within provision of accident policy.—Bulkeley v. Brotherhood Accident Co., Conn., 101 Atl. 92.

44.——Estoppel.—An insurer will be estopped to insist upon forfeiture if it either expressly or impliedly leads insured to believe that premiums may be paid after appointed day.—Farmers' & Merchants' Mutual Life Ass'n v. Mason, Ind., 116 N. E. 852.

45.——Estoppel.—In an action on a life insurance policy where plaintiff alleged that she was the legal wife of the insured, and defendant alleged that insured was "living with another woman as his wife," it cannot, after admitting that plaintiff was insured's legal wife, introduce evidence that she was merely his concubine.—Conner v. Grand Lodge of Pythias of South Carolina, S. C., 92 S. E. 1032.

46.——Evidence.—In action on accident policy, plaintiff claiming it covered death from disease, insurer could introduce its charter and certificate to do business, and fact that insured would have had to pay a larger premium for a life policy, to show that policy was not life insurance policy, and that defendant had no right to issue one.—Dunn v. Standard Life & Accident Ins. Co., Mo., 196 S. W. 100.

47.——Forfeiture.—Where agent had knowledge that insured did not maintain an iron safe as stipulated in renewal fire insurance policy, insurer was estopped to effect a forfeiture.—Big Creek Drug Co. v. Stuyvesant Ins. Co., Miss., 75 So. 768.

48.——Indemnity.—Under indemnity policy providing payments for total disability preventing insured from doing any kind of business relating to his occupation as a traveling salesman, insured, disabled from traveling by a foot ailment, but able to conduct business at office, was entitled to recover.—Gross v. Commercial Casualty Ins. Co. of Newark, N. J., 101 Atl. 169.

49.——Premium Note.—Where policy of life insurance is issued and a premium note given, and insured states that he does not intend to pay note or to take policy, and it is agreed between himself and insurer that contract and note be discharged, the beneficiary cannot recover on policy.—Peacock v. Our Home Life Ins. Co., Fla., 75 So. 799.

50.——Reinstatement.—Where life insurance policy lapsed for non-payment of premiums and interest on a loan secured thereby, the insurer was within its rights in refusing to make a second loan and reinstating policy, where there was no excess value over the amount then due.—McLeod v. Travelers' Ins. Co., Ga., 92 S. E. 1014.

51.——Waiver.—Laws 1911, p. 292, § 22, providing that constitutional provisions and by-laws of a mutual benefit society may prohibit waiver by subordinate lodge or officer, governs in actions in the state against foreign corporations, although state of such corporation's creation may recognize waivers by subordinate officials, etc.—Davis v. National Council of Knights and Ladies of Security, Mo., 196 S. W. 97.

52.——Waiver.—A claim by the insurer of a vessel that the policy had been avoided by its assignment after a loss held waived, where the

insurer proceeded to raise and repair the vessel under the provisions of the policy and demanded contribution from the insured.—Kahmann & McMurray v. Aetna Ins. Co. of Hartford, U. S. C. C. A., Conn., 242 Fed. 20.

53. **Intoxicating Liquors**—Illegal Sale.—Where one asked to get liquor for another, on receiving $1 goes and returns with whiskey and gives it to the other without disclosing the name of the person from whom he procured it, he is guilty of selling whiskey.—Williams v. State, Ark., 196 S. W. 125.

54.——License.—Under Pub. Acts 1915, c. 282, the owner of a liquor license, whether or not he has qualified to sell under it, may assign it to another who may make application to sell thereunder as a transferee.—Appeal of Cordano, Conn., 101 Atl. 85.

55. **Judicial Sales**—Restrictions.—Where court order and deed pursuant thereto made sale subject to "existing restrictions," but none was specifically set out further than that a recorded plat showed a 20-foot building line and other adjacent lots of the same vendor were sold with specific restrictions, the lot in question bore none.—Whitaker v. Lafayette Realty & Investment Co., Mo., 196 S. W. 109.

56. **Landlord and Tenant**—Forfeiture.—Where lease provided for forfeiture without notice for non-payment of rent, fact that lessor was indulgent is not proof that forfeiture would not be taken without notice.—Crawford v. Texas Improvement Co., Tex., 196 S. W. 195.

57.——Misstatement.—Where lessor of barn said he would "guarantee this barn is high enough to carry any —— —— delivery wagon that ever was built," statement was not misstatement of fact within lessor's knowledge. McGinn v. B. H. Gladding Dry Goods Co., R. I., 101 Atl. 129.

58. **Libel and Slander**—Foreign Language.—In a libel action, testimony that a circular in German, admittedly published by defendant, was understood by various readers to refer to plaintiff, and that circular, when translated, advised readers not to be misled by plaintiff, etc., made defendant's liability a jury question.—Lakich v. Gross, Mo., 196 S. W. 70.

59.——Libel Per Se.—Statement that commission council of city was about to use its funds to buy and operate a race track for the city held not libelous.—State v. O'Donnell, La., 75 So. 811.

60.——Pleading.—Declaration for libel based on circular to agents was insufficient in failing to state that any person, other than defendant's agents, ever saw or heard of the circular.—Holliday v. Maryland Casualty Co., Miss., 75 So. 764.

61. **Master and Servant**—Compensation Act.—The federal Employers' Liability Act, making an employer's liability for an injury in interstate commerce depend upon its negligence, ousts court of common pleas jurisdiction under New Jersey Workmen's Compensation Act to award compensation against carrier for injury to employe while both are engaged in interstate commerce.—Rounsaville v. Central R. of New Jersey, N. J., 101 Atl. 182.

62.——Contributory Negligence.—That laborer selected a poker with slivered end, using which caused a wound to his hand, resulting in blood poisoning, was not contributory negligence as a matter of law, where all pokers furnished him were similarly defective.—Schultz v. St. Louis Malleable Casting Co., Mo., 196 S. W. 52.

63.——Dependent.—"Dependent," within Workmen's Compensation Act, is one who looks to another for support and maintenance, one who is in fact dependent, who relies on another for reasonable necessities of life; question is whether contributions were looked to and relied on, in whole or part, for means of reasonable support.—In re Carroll, Ind., 116 N. E. 844.

64.——Dependency.—Under Workmen's Compensation Act, § 37, father, partially dependent on minor son, who took all son's earnings, should receive, as compensation for son's death, amount he would have received, had he been wholly dependent.—In re Peters, Ind., 116 N. E. 848.

65.——Independent Contractor. — Notwithstanding dredging work was let to an independent contractor, the person letting the contract was responsible for injuries to adjoining landowner, caused by construction of levees on the bank, and by pumping silt, etc., necessarily cast upon the land behind the levees.—North American Dredging Co. v. Pugh, Tex., 196 S. W. 255.

66.——Independent Contractor.—Where independent contractor with railroad to rid road of nuisance removed carcass of dead mule from road's right of way and placed it on plaintiff's premises, thus creating nuisance to plaintiff, road was liable.—Southern Ry. Co. v. Robertson, Ala., 75 So. 831.

67.——Partial Dependency.—Under Workmen's Compensation Act, § 37, prescribing amount of compensation to partial dependent, where deceased employe turned all wages over to mother, his partial dependent, she was entitled to compensation in same amount as if she had been totally dependent.—Bloomington Bedford Stone Co. v. Phillips, Ind., 116 N. E. 850.

68.——Reasonable Needs.—Word "dependent," in Workmen's Compensation Act, should be given meaning broad enough to include reasonable needs of parent in proper support of himself and dependent family.—In re Peters, Ind., 116 N. E. 848.

69.——Total Dependency.—Total dependency on deceased employe, within Workmen's Compensation Act, exists where dependent subsists entirely on earnings of decedent, but, when otherwise entitled to rights of total dependents, claimants are not deprived thereof by temporary gratuitous services rendered them by others, etc. —Bloomington-Bedford Stone Co. v. Phillips, Ind., 116 N. E. 850.

70.——Warning.—Where grab setter was aware of danger attendant upon his attempt to chock a wheel in obedience to order of foreman, held, that there was no necessity for warning by foreman.—Kirby Lumber Co. v. Hardy, Tex., 196 S. W. 211.

71.——Workmen's Compensation Act.—Where diseased employe is injured under such circumstances he might have secured compensation under Workmen's Compensation Act had no disease been involved, but disease is materially aggravated or accelerated by injury, resulting in disability or death earlier than would have otherwise occurred, there may be award under Workmen's Compensation Act.—In re Bowers, Ind., 116 N. E. 842.

72. **Mechanic's Lien**—Separate Building.—A Sunday school building on the same tract of property upon which a church was located and connected therewith by a corridor, electric wires, and steam pipes is not a building separate from the church within the Lien Law.—Miller v. Trustees of Trinity Union Methodist Episcopal Church, R. I., 101 Atl. 106.

73. **Municipal Corporations**—Assessing Benefits.—Where a city constructed sewer improvement, collected all assessments therefor, and made full payment, it cannot raise amount in excess of cost by assessing benefits to one who has subsequently erected dwelling and made connections with sewer.—Appeal of Schellen, Conn., 101 Atl. 81.

74.——Assessment.—Frontage may be taken into account as basis for determining benefits to land from improvement in street, and mere fact that assessment was substantially in accordance with cost of improvement in front of each tract is not conclusive that assessment was not according to special benefits conferred, and does not overcome presumption that city council proceeded according to law.—Snyder v. City of Belle Plaine, Iowa, 163 N. W. 594.

75.——Fee in Street.—Where city widened street and remained in possession for 40 years, under authority of Acts 1836, c. 63, vesting in it title to street so widened provided that rights of individuals who owned fee in street were not interfered with, it acquired title to fee by ad-

verse possession, since agreement whereby proprietors relinquished all interest in the street though not sufficient to convey fee, showed that city occupied street in the belief that fee vested in it.—Brady v. City of Baltimore, Md., 101 Atl. 142.

76.——Ordinance.—An ordinance, forbidding under penalty any woman of disreputable character to loiter about the streets or stores of a city without proving that she is on unavoidable business, is not unconstitutional.—Neal v. City of Dublin, Ga., 92 S. E. 1021.

77.——Proximate Cause.—Where plaintiff was injured by collision with team of horses caused to run away by fall of wheel into hole negligently permitted to remain in city street, by which fall the doubletree became unfastened and fell on one of the horses, frightening them, it could not be said as matter of law that the city's negligence was not the proximate cause of plaintiff's injuries.—City of Ft. Worth v. Patterson, Tex., 196 S. W. 251.

78.——Streets and Sidewalks.—Owner who had erected retaining wall along sidewalk so that snow accumulating on premises melted, ran over on to sidewalk, and froze, was not liable to pedestrian falling on ice, where there was no showing that snow had been brought to premises from another place.—Lightcap v. Lehigh Valley R. Co. of New Jersey, N. J., 101 Atl. 187.

79. **Names**—Identity in.—Identity of names without anything more is not prima facie presumptive of identity of persons upon motion to quash the venire because the same person is on the regular panel and on the special venire.—Davis v. State, Ala., 75 So. 825.

80. **Physicians and Surgeons**—Malpractice.—In action against physician for malpractice, wherein plaintiff introduced no evidence of general ability, physician could not introduce testimony as to it.—Hackler v. Ingram, Tex., 196 S. W. 279.

81. **Principal and Agent**—Misrepresentation.—Seller of lot, in buyer's action to rescind for misrepresentations as to character of so-called street, could not be heard to assert buyer had no right to rely on representations of fact claimed to have been made by seller's agent.—Janus v. Olive Street Terrace Realty Co., Mo., 196 S. W. 81.

82. **Railroads** — Contributory Negligence. — Evidence that deceased had discovered approaching train and ran along a track towards a cattle guard and crossing tended to show contributory negligence.—Texas & P. Ry. Co. v. Jones, Tex., 196 S. W. 357.

83.——Instructions.—An instruction held not to fully cover the rule that while a traveler on a highway about to cross a railroad may presume, within reasonable limits, that the company will obey the laws and ordinances as to operation of cars, this does not relieve him from exercise of due care, but is only to be considered in determining whether he exercised such care.—Union Traction Co. of Indiana v. Elmore, Ind., 116 N. E. 837.

84.——Negligence.—It was not duty of driver of buggy to have it equipped with a light to indicate its presence to servants of a railroad at crossing.—Webb v. Deering Southwestern Ry. Co., Mo., 196 S. W. 86.

85.——Reorganization.—Reorganization committee's bid of $6,000,000 for railroad at foreclosure sale held a fair price, where road was not paying operating expenses and interest on receiver's certificates.—Simon v. New Orleans, T. & M. R. Co., U. S. C. C. A., 242 Fed. 62.

86. **Reformation of Instruments**—Voluntary Grantee.—Complainant, voluntary grantee of his deceased mother, had right to have deed reformed as against defendant brother, also a voluntary grantee.—Spencer v. Spencer, Miss., 75 So. 770.

87. **Sales**—Acceptance.—Where buyer contracts for certain kind of property, and a different kind is tendered, he may treat the contract as ended, and sue to recover the part of price paid at making of contract, and need not accept property and sue for breach.—Allison v. Thomas, Ga., 92 S. E. 1011.

88.——Failure of Consideration.—Buyer's failure to make complaint in writing 10 days after he had begun operating engine, as required by contract, held not to defeat his right to show failure of consideration, and to have cancellation and recovery of amount paid.—Southern Engine & Pump Co. v. Teneha Light & Power Co., Tex., 196 S. W. 260.

89.——False Representations.—A buyer induced to enter into a contract of sale by false representations of another as to material facts, whereby he is damaged is entitled to relief from the contract, though representations were made in good faith without intent to defraud.—Helvetia Copper Co. v. Hart-Parr Co., Minn., 163 N. W. 665.

90. **Street Railroads**—Street Paving.—Under street railroad's franchise requiring it to pay expense of paving streets made extra by reason of railway, the term "railway" was not confined to track, but included operation of cars thereon, and required payment for extra width of street necessitated by tracks thereon.—City of Duluth v. Duluth St. Ry. Co., Minn., 163 N. W. 659.

91. **Telegraphs and Telephones**—Mistake in Telegram.—Suit by recipient of telegram against telegraph company for damages occasioned by mistake in transmission is based on telegraph company's violation of public duty to correctly transmit and deliver the message, and not on contract between sender and telegraph company.—Poor v. Western Union Telegraph Co., Mo., 196 S. W. 28.

92.——Unrepeated Message.—Where one received unrepeated interstate telegram sent subject to stipulation that company should not be liable for mistake in transmission of unrepeated message beyond amount charged for sending same, sendee for such a mistake could recover only amount paid for sending message.—Poor v. Western Union Telegraph Co., Mo., 196 S. W. 28.

93. **Tenancy in Common**—Ouster.—To render possession of a co-tenant adverse it must affirmatively appear that others had knowledge of his claim of exclusive ownership, accompanied by such acts of possession as would amount to an ouster as between landlord and tenant.—Vermont Marble Co. v. Eastman, Vt., 101 Atl. 151.

94. **Trusts**—Evidence.—In action by widower to establish a resulting trust against his wife's heirs, in land taken in her name, evidence held insufficient to warrant recovery.—Bucknell v. Johnson, S. D., 163 N. W. 683.

95.——Resulting Trust.—The presumption of resulting trust where transfer of realty is made to one upon payment of the consideration by another, declared by Civ. Code, § 303, is not a conclusive legal presumption, but rebuttable.—Bucknell v. Johnson, S. D., 163 N. W. 683.

96. **Vendor and Purchaser**—Stipulation as to Title.—Where a contract for sale of land stipulates that vendor shall furnish an abstract of title showing a title satisfactory to purchaser's attorney, purchaser will be justified in refusing to accept title tendered if attorney in good faith and not capriciously declares himself dissatisfied with such tendered title.—Giles v. Union Land Co., Tex., 196 S. W. 312.

97.——Tender.—The right of a purchaser to rescind contract and recover purchase price because of failure of vendor to tender a full and sufficient warranty deed at appointed time cannot be destroyed by subsequent tender of such a deed at the trial.—Ross v. Haynes, Tex., 196 S. W. 364.

98. **Waters and Water Courses**—Non-navigable Stream.—After selling land bordering on a non-navigable stream, the state, without the consent of the purchaser, cannot lease to another the bed of the stream for the purpose of drilling for oil or gas.—Palmer Co. v. Wilkinson, La., 75 So. 806.

99. **Wills**—Contest.—In will contest leaving property to wife of deceased's physician, contestants were entitled to instruction as to jealousy with which law views transaction of such kind between physician and patient.—Holbrook v. Seagrave, Mass., 116 N. E. 889.

100.—Description of Property.—Where a will devises certain property described by township and range and erroneously described by section, the description is sufficient where land intended to be devised is within the general description given.—Daniel v. Crusenbury, Ill., 116 N. E. 833.